

In The United States Court of Federal Claims

No. 12-230T

(Filed: June 7, 2013)

JASON AND WENDY MOSKOWITZ,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

ORDER

On September 21, 2012, plaintiffs filed a motion for summary judgment. On October 25, 2012, defendant filed a cross-motion for summary judgment, invoking the substantial variance doctrine as a defense. On November 26, 2012, plaintiffs filed their response to defendant's cross-motion, arguing, *inter alia*, that they need discovery on whether defendant waived any substantial variance defense. On May 31, 2013, the court held oral argument. Based on its review of the case, the court hereby **GRANTS** plaintiffs' request for discovery on the waiver issue, as follows:

1. Fact discovery on the waiver issue – and limited to that issue – shall conclude on or before September 4, 2013; and
2. On or before September 18, 2013, the parties shall file a joint status report indicating how this case should proceed, including a proposed schedule, if appropriate, for further briefing on the pending cross-motions.

IT IS SO ORDERED.

s/ Francis M. Allegra

Francis M. Allegra

Judge